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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221
	)	
Television Satellite Stations Review of Policy and Rules	)	MM Docket No. 87-8

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<u>COMMENTS OF PULITZER BROADCASTING COMPANY</u>

Pulitzer Broadcasting Company ("Pulitzer"), the licensee of nine full-service broadcast television stations,[1/] hereby submits its comments in response to the Further Notice of Proposed Rule Making ("Notice")[2/] in the above-referenced proceeding. The Notice, among other things, proposes substantial changes in the national and local ownership rules applicable both to television stations, and to broadcast television networks (primarily through the rules applicable to station licensees). The Commission has made these proposals on the basis of its new framework for analysis of competition and diversity in the television marketplace, its re-regulation of cable television, and its awareness of the growth of competition in the video

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1/ Pulitzer Broadcasting is the licensee of: KETV, Omaha, Nebraska; KCCI, Des Moines, Iowa; WGAL, Lancaster, Pennsylvania; WLKY, Louisville, Kentucky; WXII, Greensboro, North Carolina; WYFF, Greenville, South Carolina; KOAT, Albuquerque, New Mexico; WDSU, New Orleans; WESH, Daytona Beach, Florida.

2/ Further Notice of Proposed Rule Making, MM Docket Nos. 91-221 and 87-8, FCC 94-322, 1995 FCC Lexis 328, (released Jan. 17, 1995).

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marketplace (e.g., the initiation of Direct Broadcast Satellite service and the growth of wireless cable services).

Competition in the local video marketplace and diversity in ownership should remain key concerns for the Commission, as these are bedrock values inherent in the Communications Act and the successful communications policy it has guided over the past six decades. However, the analysis and conclusions in the Notice are insufficient to justify all of the rule changes proposed therein. For the following reasons, Pulitzer, while not opposing liberalization of the number of television stations a single entity may own, supports un-modified retention of the national multiple ownership rule section that limits to twenty-five percent the national audience reached by television stations owned by a single entity. Pulitzer supports a modest and cautious liberalization of the local ownership rule prohibiting duopolies, and encourages the FCC to adopt rules requiring the prior Commission approval of television Local Marketing Agreements ("LMA's") and similar agreements between local stations.[3/]

I. National Ownership Issues

Section 73.3555(d)(2)(ii) of the Commission's Rules, 47 C.F.R. §73.3555(d)(2)(ii), prohibits a single party from owning television stations which have an aggregate national audience

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3/ Pulitzer's comments in this proceeding address these two basic issues. In addition, Pulitzer, as a member of the Television Operator's Caucus and each of the television network affiliate associations represented by the Network Affiliated Station Alliance (NASA), supports the views expressed in comments on filed on behalf of those organizations.

reach exceeding twenty-five percent which are not minority-controlled. After an examination of competitiveness of the markets for delivered video programming, the market for advertising, the video program production market, and diversity, the Notice tentatively concludes that liberalization of the national ownership limits would not have an adverse impact on any of these considerations. Accordingly, the Commission has proposed to raise national ownership limits in two basic ways: (1) increasing the number of stations a single entity may own; and (2) raising the percentage of the national television audience that stations under common ownership may serve.[4/] Pulitzer does not oppose liberalization of the limit on the number of stations a single entity can own, so long as the combined national audience reach of those stations does not exceed twenty-five percent.

As the Notice correctly assumes, the issue of national ownership limits for television stations involves complex economic questions including maintaining the balance of market forces within the broadcast industry. As the owner of affiliates of three of the major commercial networks (NBC, Capital-Cities/ABC, and CBS), Pulitzer supports current communications policy which bases television ownership limits on the combined national reach of the stations. The current limit of twenty-five percent is very significant to the maintenance of healthy competition in the supply of national programming for local stations, especially the availability of such programming to

4/ See Notice at ¶¶ 100-104.

independently-owned stations currently affiliated with national networks. Alteration of this limit would immediately create incentives for the networks to acquire stations in many markets which are now served by an independently-owned network affiliate. This possibility would have immediate negative impact on the relative bargaining strength of local affiliates vis-a-vis their powerful network program suppliers. In addition, other non-network group owners of television stations should not be permitted to expand their ownership of stations to serve more than twenty-five percent of the national television audience, as this would create severe imbalances in the bargaining strengths of television stations in the sale of advertising to national accounts and in the purchasing of non-network or syndicated programming for local audiences.

Furthermore, liberalization of the current limit of twenty-five percent is not necessary to ensure the continued competitive viability of broadcast television networks, and it is not in the public interest as it would diminish ownership diversity. The national television networks already enjoy near total national reach through their owned and operated stations and their affiliated stations.[5/] By increasing the national

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5/ Moreover, the Commission recently eliminated two restrictions on networks by repealing the "network station ownership rule" that prohibited a network organization from owning a television broadcast station in a small market if such ownership would substantially restrain competition, and the "secondary affiliation rule" which provided that in markets where two stations are affiliated with two of the three major networks, the third major network must seeking affiliation in the market must first offer its programming to an independent station. See Report and Order in MM Docket 91-221, FCC 95-97 (released March 7, 1995).

audience reach of a single entity beyond the current limit, the FCC would thereby permit the networks to increase the number of stations they own directly. This, if it occurred, in turn, would lessen ownership diversity within the industry, since the networks would of necessity purchase stations currently owned by other entities. The resulting increase in ownership concentration by the handful of network owners would substantially alter the relationship between the networks and their affiliated stations to the detriment of competition and the diversity of voices in the local market.

II. Local Ownership Issues

Section 73.3555(a)(3) of the Commission's Rules, 47 C.F.R. §73.3555(a)(3), prohibits ownership by a single entity of two television stations with overlapping Grade B contours. This rule was intended to promote competition and diversity. The Notice evaluates potential liberalization of this rule in terms of these goals, recognizing that changes in the local ownership rules may give rise to serious concerns. Specifically, the Notice proposes to modify the contour overlap rule from Grade B to Grade A, resulting in a prohibition that protects competition in the actual local market, but avoids unnecessary peripheral application of the rule.[6] In addition, the Notice proposes procedures to permit the use of television Local Marketing Agreements ("LMA's") on terms similar to those now applicable to

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6/ See Notice at ¶ 116.

radio stations, subject to the limits of the multiple ownership rules.[7/]

Pulitzer supports retention of the television duopoly rule without any major liberalizations based on the types and circumstances surrounding the stations involved. Moreover, Pulitzer supports the proposal to treat television LMA's like radio LMA's, and urges the Commission to consider adoption of restrictions on other contractual arrangements between television stations that may effectively evade the duopoly rule. Pulitzer agrees with the proposal in the Notice to use the predicted Grade A contour (rather than the Grade B) as the duopoly rule's measurement benchmark. This change would not materially affect the important protections for competition and diversity served by the duopoly rule. The Grade A is a more accurate reflection of the local market in which the station is operating and in which combinations between television stations would have an adverse effect on the ownership diversity and robustness which have served the public well.

However, Pulitzer has great concern over the use of LMA's by television stations, as they function in all material economic ways to reduce competition in the local marketplace. In the absence of Commission rules and policies governing their use, they have become de facto waivers of the duopoly rules. Television LMA's and other agreements used to circumvent the duopoly rule are currently evading FCC scrutiny. This is not in the public interest, and the FCC should adopt a rule requiring prior

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7/ See Notice at ¶¶ 133-140.

Commission approval of LMA's or similar agreements based on an assessment of the conditions unique to each local market.

III. Conclusion

For the reasons set forth above, Pulitzer asks the Commission to refrain from altering its current rule limiting to twenty-five percent the national audience reach of stations under common ownership. If liberalization of the national ownership rule is found to be in the public interest, the Commission should liberalize only the limitation on the number of stations a single entity may own, maintaining the limit of twenty-five percent on the combined national audience reach of stations under common ownership. Pulitzer supports a very cautious liberalization of the local ownership prohibitions against duopolies, by permitting slightly greater signal overlaps, and encourages the Commission to adopt policies preventing the use of LMA's as de facto duopolies.

Respectfully submitted,

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